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State v. Rye Respondent's Brief Dckt. 41710

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41710
Plaintiff-Respondent,)	
)	Canyon Co. Case No.
vs.)	CR-2013-7753
)	
GROVER RYE, JR.,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

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District Judge**

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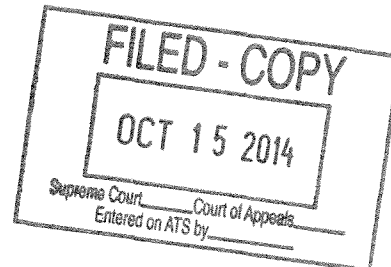


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUE	4
ARGUMENT	5
Rye Has Failed To Show Error In The District Court's Interpretation Of I.C. § 18-8309(1) As Requiring Him To Update His Registration Information Within Two Days Of Leaving His Last Registered Address	5
A. Introduction.....	5
B. Standard Of Review	5
C. The District Court Correctly Concluded Rye Was Subject To The Two-Day Registration Requirement Of I.C. § 18-8309(1)	5
CONCLUSION	8
CERTIFICATE OF SERVICE.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Lee</u> , 153 Idaho 559, 286 P.3d 537 (2012)	5
<u>State v. Schwartz</u> , 139 Idaho 360, 79 P.3d 719 (2003)	5
<u>Verska v. St. Alphonsus Regional Medical Center</u> , 151 Idaho 889, 265 P.3d 502 (2011)	5
 <u>STATUTES</u>	
I.C. § 18-8303	7
I.C. § 18-8304	1
I.C. § 18-8307	1
I.C. § 18-8308	2, 6, 7
I.C. § 18-8309	passim
I.C. § 18-8311	1

STATEMENT OF THE CASE

Nature of the Case

Grover Rye, Jr., appeals from the judgment entered upon his conditional guilty plea to failure to register as a sex offender.

Statement of Facts and Course of Proceedings

Rye is a registered sex offender. (R., p.5; PSI, p.3.) As of March 11, 2013, Rye's registered place of residence was the Light House Rescue Mission ("the Lighthouse") in Nampa, Idaho. (Id.) On March 15, 2013, staff at the Lighthouse informed law enforcement that "Rye had left [their] facility on 3/11/13 and had not returned." (Id.) Law enforcement attempted to locate Rye but were unable to do so until April 1, 2013, when Rye was "arrested for an offense." (Id.) During an interview with law enforcement, Rye admitted that, after he left the Lighthouse, he went to Nevada for a few days, then returned to Idaho and stayed with friends in Canyon and Owyhee Counties. (PSI, p.3.) Rye also admitted he never updated his registration information after he left the Lighthouse. (Id.)

The state charged Rye with failure to register as a sex offender, in violation of I.C. §§ 18-8304, 18-8307, 18-8308, 18-8309 and 18-8311. (R., pp.18-19.) Specifically, the Information alleged that Rye,

on or about the 11th day of March, 2013, in the County of Canyon, State of Idaho, after establishing residence in Canyon County, has failed to update his registration information within two working days as required by statute, after having been convicted of the crime of Sexual Batter[y] On A Minor Child, pursuant to Idaho Code Section 18-1508A.

(R., p.19.) The state also filed an Information Part II, alleging Rye was a persistent violator. (R., pp.24-25.)

Before trial, the parties asked the district court to resolve an issue of statutory interpretation, to wit: Whether Rye – who was subject to sex offender registration and had registered the Lighthouse as his place of residence – was subject to the requirement of I.C. § 18-8309(1) that he update his registration information within two working days of leaving the Lighthouse, or whether he had seven days to do so, as contemplated by I.C. § 18-8308(4). (Tr., p.5, L.9 – p.6, L.6.) Following a hearing on the issue, the district court determined that Rye was subject to the two-day registration requirement of I.C. § 18-8309(1). (R., pp.37-38; Tr., p.23, L.22 – p.27, L.12.) Specifically, the court ruled:

[U]nder [I.C.] § 18-8309 when an individual registers but then leaves his/her registered address, the offender shall appear within two (2) working days to notify the sheriff. Thus, upon leaving the Lighthouse, the Defendant would have had two (2) days to inform the Canyon County Sheriff's Office he was no longer living at the Lighthouse and give them an address or location where he was staying. If the Defendant did not have an address to go to, under [I.C.] § 18-8308(4), the Defendant must go to the sheriff every seven days to check in. The Court finds an individual cannot avoid [the] registration requirement just because they are homeless. Thus, the statute is clear and Defendant did have an obligation to update his registration.

(R., p.37.)

Following the district court's ruling, Rye entered a conditional guilty plea to failure to register as a sex offender, reserving the right on appeal to challenge the district court's interpretation of the relevant statutes; in exchange, the state dismissed the persistent violator enhancement and agreed to cap its recommendation as to the determinate portion of Rye's sentence at one and

one-half years. (R., pp.39-51, 59; Tr., p.32, L.13 – p.49, L.18.) In recognition that Rye “probably did not intend to break the law in this particular case,” the district court imposed a unified sentence of three years, with one and one-half years fixed, but suspended the sentence and placed Rye on probation for a period of three years. (R., pp.60-62; Tr., p.67, L.1 – p.68, L.16.) Rye timely appealed. (R., pp.63-65.)

ISSUE

Rye states the issue on appeal as:

Did the district court misinterpret Idaho Code § 18-8309 as requiring Mr. Rye to notify the county sheriff within two days of leaving his residence, even though Mr. Rye had become homeless and/or left the State?

(Appellant's brief, p.5.)

The state rephrases the issues as:

Has Rye failed to show error in the district court's interpretation of I.C. § 18-8309(1) as requiring Rye to update his registration information within two days of leaving his last registered address?

ARGUMENT

Rye Has Failed To Show Error In The District Court's Interpretation Of I.C. § 18-8309(1) As Requiring Him To Update His Registration Information Within Two Days Of Leaving His Last Registered Address

A. Introduction

“Mindful of the plain language of the relevant statutes,” Rye argues “the district court erroneously concluded that, pursuant to I.C. § 18-8309, he was required to notify the Canyon County Sheriff’s office that he was no longer living at the Lighthouse, within two days of leaving.” (Appellant’s brief, p.6.) Rye’s argument fails. The plain language of I.C. § 18-8309(1) supports the district court’s conclusion that Rye was required to update his registration information within two days of leaving the Lighthouse, which was Rye’s last registered address.

B. Standard Of Review

The interpretation of a statute presents a question of law over which the appellate court exercises free review. State v. Lee, 153 Idaho 559, 561, 286 P.3d 537, 539 (2012).

C. The District Court Correctly Concluded Rye Was Subject To The Two-Day Registration Requirement Of I.C. § 18-8309(1)

“The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.’” Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). “If the statute is not

ambiguous, this Court does not construe it, but simply follows the law as written.” Id.

Idaho Code § 18-8309 governs the duty of sex offenders to update their registration information and provides, in relevant part:

(1) If an offender subject to registration changes his or her name, street address or actual address, employment or student status, the offender shall appear in person within two (2) working days after the change at the office of the sheriff of the county where the offender is required to register and notify the sheriff of all changes in the information required for that offender in the sex offender registry. ... Within three (3) working days after receipt of the notice, the sheriff shall notify the department of the changed information and the department shall notify all other counties and jurisdictions in which the offender is required to register. An offender satisfies the notification requirements set forth in this subsection if he or she appears in another jurisdiction in which registration is required and notifies that jurisdiction of the changed information.

I.C. § 18-8309(1). As found by the district court, the language of this statute is unambiguous and plainly requires a sex offender who changes his or her address to notify the county sheriff within two working days of the change. Because it is undisputed that “Rye was subject to registration, had a residence, and then left his residence” (Appellant’s brief, p.7), the district court correctly concluded Rye was required under I.C. § 18-8309(1) to update his registration information within two days of leaving his last registered address.

Rye does not seriously contend otherwise. Instead he adopts his trial counsel’s argument that, because Rye allegedly had no permanent residence *after* leaving the Lighthouse, his duty to register “should fall under the requirements under 18-8308(4), that he report in person ... once every seven

days with the sheriff.” (Tr., p.20, L.22 – p.21, L.5; see also Appellant’s brief, pp.7-8.) Rye’s argument is without merit.

Idaho Code § 18-8308(4) states:

(4) A sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every seven (7) days to the sheriff of the county in which he resides. Each time the offender reports to the sheriff, he shall complete a form provided by the department that includes the offender’s name, date of birth, social security number and a detailed description of the location where he is residing. The sheriff shall visit the described location at least once each month to verify the location of the offender.

I.C. § 18-8308(4). Pursuant to the plain language of this statute, the seven-day reporting requirement applies only to sexual offenders who do not provide a physical residence address at the time of registration.

In this case, it is undisputed that Rye had registered the Lighthouse’s address as his physical residence.¹ Because Rye had registered a physical residence address, he was required by the plain language of I.C. § 18-8309(1) to notify the county sheriff within two days of leaving that address that he no longer resided there. As found by the district court, if, at that time, Rye did not have a new physical address to report, the requirements of I.C. § 18-8308(4) would have been triggered and he would thereafter have been required to report to the sheriff every seven days and provide a detailed description of the location where he was residing. (See R., p.37 (“If the Defendant did not have an address to go to, under [I.C.] § 18-8308(4), the Defendant must go to the sheriff every seven

¹ For purposes of the sex offender registration statutes, a “residence” is defined as “the offender’s present place of abode.” I.C. § 18-8303(15).

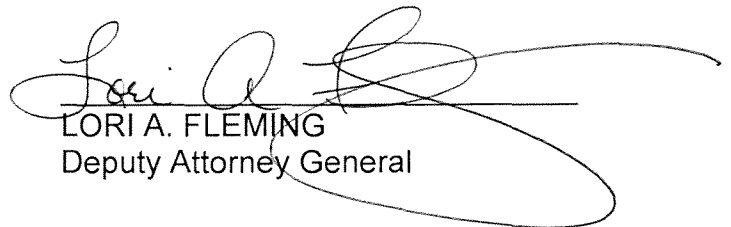
days to check in.”); Tr., p.25, L.25 – p.26, L.9 (Rye was required to notify the sheriff within two days of leaving his registered address and “if at that time [he] did not have a physical address, then under subsection 18-8308(4), the sheriff would have instructed [him] to report every seven days.”).)

The plain and unambiguous language of I.C. § 18-8309(1) supports the district court’s determination that Rye was required to update his registration information within two days of leaving his last registered address. Rye has failed to show any basis for reversal.

CONCLUSION

The state respectfully requests this Court to affirm Rye’s conviction and sentence.

DATED this 15th day of October, 2014.

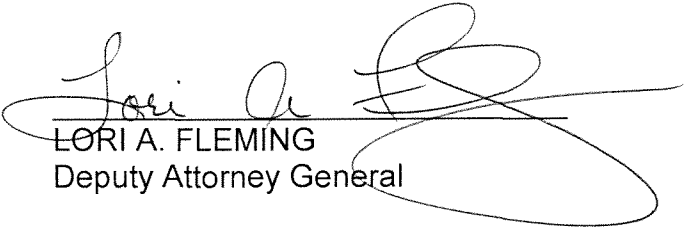

LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of October, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



LORI A. FLEMING
Deputy Attorney General

LAF/pm